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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,816	01/22/2002	James G. Prather	MW001.02	9529

7590 02/25/2004

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EXAMINER

RESTIFO, JEFFREY J

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,816

Applicant(s)

PRATHER, JAMES G.

Examiner

Jeffrey J. Restifo

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 18-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/1/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3618

DETAILED ACTION

Acknowledgments

1. Acknowledgment is made of the amendment filed 12/1/03.

Election/Restrictions

2. Claims 18-23 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group II, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7. The requirement having been made Final in paper No. 8.

Drawings

3. The drawings were received on 12/1/03. These drawings are approved.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-11, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley (US 3,774,929 A) and in further view of Huffman et al. (US 3,052,484 A).

Art Unit: 3618

With respect to claims 1, 5, and 7, Stanley discloses a multi-level personal utility cart 10 comprising a frame 16 with handle 34 having rearward upper portion, side portions, and forward lower portion, a first lower basket assembly 12, 14 with open top, a second upper basket assembly 100 with open top, wherein said lower basket assembly is pivotable relative to said frame and can be collapsed independently onto said frame to form a substantially planar structure, as shown in figures 1-7. Stanley does not disclose the upper basket as being pivotally secured to the frame. Huffman et al. does disclose a cart comprising a pair of pivoting baskets 19, 20 wherein said baskets are pivotally secured to a frame 1, as shown in figures 1 and 2. It would have been obvious to one having ordinary skill in the art at the time of the invention to have pivotally attached the upper basket of the cart of Stanley, as taught by Huffman et al., in order to collapse the cart for easy storage.

With respect to claims 2-4, 6, 8-11, and 17, Stanley discloses swivel wheels (or casters) 38 on said lower handle portion, U-shaped segments forming the handle, a vertical support member 12 with wheels 20, front, side, and back panels on each basket assembly, and wherein said back panels are a planar grillwork backbone of wires 24 on said vertical members, as shown in figures 1-7.

With respect to claim 14, Stanley discloses clips 32 for securing the lower basket, as shown in figure 7. Stanley does not disclose the clips for securing the upper basket to the lower basket. It would have been obvious to one having ordinary skill in the art at the time of the invention to have applied the clips used to secure the lower basket of cart of Stanley and Huffman et al. to the upper basket for securing it to the lower basket.

Art Unit: 3618

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley and Huffman et al., as applied to claim 1 above, and further in view of Luff (US 3,310,317 A).

Neither of Stanley nor Huffman et al. disclose a parallel hook member on the cart for hanging the cart. Luff does disclose a parallel hook member 44, as shown in figure 1. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the cart of Stanley and Huffman et al. with the parallel hook member of Luff in order to hang the cart when not in use.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stanley and Huffman et al., as applied to claim 1 above, and further in view of Sawyer et al. (US 5,901,482 A).

Neither Stanley nor Huffman et al. disclose tag holders on the front panels. Sawyer et al. discloses tag holders 22, 24 for attachment to a front panel of a shopping cart 10, as shown in figure 1. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the cart of Stanley and Huffman et al., with the tag holder of Sawyer et al. in order to place advertising tags on the cart.

Double Patenting

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Art Unit: 3618

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 1-7 and 10-17 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-7 and 10-17 of copending Application No.

10/055,819. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Response to Arguments

10. Applicant's arguments with respect to claims 1-11 and 14-17 have been considered but are moot in view of the new ground(s) of rejection.

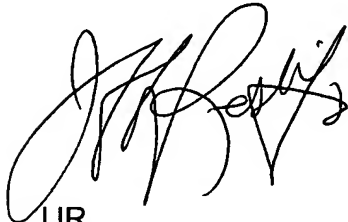
Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (703) 305-0579. The examiner can normally be reached on M-F (10:00-6:00), alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Johnson can be reached on (703) 308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Art Unit: 3618

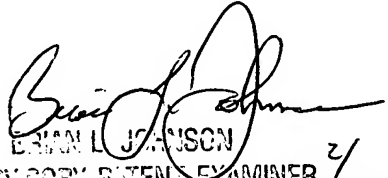
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



JJR

February 20, 2004

Jeffrey J. Restifo
Examiner
Art Unit 3618



BRIAN L. JOHNSON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

2/23/04